

SPECIAL PUBLIC NOTICE

CHARLESTON DISTRICT REGULATORY UPDATE: PROGRAMMATIC EMPHASIS ON DA PERMIT APPLICATIONS

The purpose of this notice is to provide an update on the U.S. Army Corps of Engineers (Corps), Charleston District's Regulatory Program. Effective immediately, the Regulatory Division is refining its process to emphasize review of Department of the Army (DA) permit applications and requests associated with pending DA permit applications.

This process refinement will enable the Regulatory Division to direct greater resource emphasis toward its fundamental mission of regulating activities in the nation's waters and wetlands and provide the public with more efficient, timely service when reviewing DA permit applications for projects that propose impacts to waters of the United States. As a result, this refinement effort will also allow the Regulatory Division to more effectively support an anticipated increase in program volume from the Infrastructure Investment and Jobs Act and other national authorizations.

Preliminary and approved jurisdictional determinations (JDs), delineation concurrences and other documentation verified by the Regulatory Division are not prerequisites for submitting a DA permit application. These approvals and verifications are also not intended to be prerequisites for development approvals by state and local government(s). Due to the state of South Carolina's geography and broad expanse of aquatic resources in concert with an increase in development activity across the state of South Carolina, the Regulatory Division has seen a significant increase in the number of requests for JDs and delineation concurrences. For example, the Regulatory Division processed 1,800 standalone JD requests in Fiscal Year 2021, more than the 2.5 times the national average. Currently, the Regulatory Division is reviewing over 600 pending standalone JD requests, and on average, Regulatory Division project managers have 45-55 pending standalone JD requests at any given time.

The Regulatory Division is also aware of increasing mandates by state and local government entities to require Corps-verified delineations and/or JDs for activities and transactions unrelated to DA permit applications. The growing volume of these standalone requests is exacerbating the Regulatory Division's already heavy workload, ultimately delaying the Regulatory Division's ability to provide efficient reviews of DA permit applications. To facilitate better public service, encourage smart development and help preserve the nation's natural resources, and as part of this process refinement, the Regulatory Division will be continuing its work with state and local government entities to further inform them of the Regulatory Division's position on the unintended consequences of their requirements, which are impacting the Regulatory Division's ability to review and process DA permit applications and associated JDs as efficiently as possible.

Regulatory Division project managers consult the 1987 Army Corps of Engineers Wetland Delineation Manual and appropriate regional supplement(s) to delineate wetlands and waters for purposes of federal jurisdiction. Private sector environmental consultants who *properly* rely upon and apply these documents are generally equipped to provide accurate and expeditious

delineations to their clients when the Regulatory Division's review of a DA permit application is not immediately required. Over the past five years, and in accordance with Regulatory Guidance Letter No. 16-01 (link below), the Regulatory Division has routinely engaged the regulated community in response to standalone requests to discuss what level of verification, if any, is appropriate for the circumstances of a given standalone request. In many cases, the services of private sector environmental consultants may be sufficient to respond to state or local requirements in the absence of the Regulatory Division's review of a DA permit application. In furtherance of these efforts, the Regulatory Division strongly encourages members of the public seeking support not associated with a project requiring a DA permit application to leverage the robust community of environmental consultants in South Carolina in response to independent requirements of state and local government(s).

I. Charleston District Prioritization of Work: To serve the regulated community in the most effective and efficient manner possible, this process refinement will allow the Regulatory Division to direct greater resource emphasis toward its fundamental mission of regulating activities in the nation's waters and wetlands and provide the public with more efficient, timely service when reviewing DA permit applications for projects that propose impacts to waters of the United States. Effective immediately, the Charleston District Regulatory Division will prioritize incoming requests in the following order:

- 1. Review and processing of new DA permit applications (Standard Permits/Nationwide Permits/Regional General Permits).**
- 2. Modifications of existing DA Permits / DA Permit Transfers.**
- 3. JD Requests and/or Delineation Concurrences (DCs) Not Associated with a DA permit application (Standalone JDs/DCs) submitted with sufficient supporting information. (NOTE: Supporting information is identified within the ["Jurisdictional Determination \(JD\)/Delineation Request and Checklist"](#). See *Section III for information and prioritization of Standalone JDs/DCs***

II. Timeframes Associated with DA Permit Actions: Timeframes for processing DA permit applications are contingent upon the receipt of a complete application, as well as any supporting information that may be required to make a final decision on the DA permit application. In general, the Regulatory Division strives to review and process DA permit applications according to the following timelines:

- Standard Permits (120-365 days);
- Nationwide Permits (45-60 days); and
- Regional General Permits (60-90 days).

Deficiencies or delays by an applicant in providing sufficient supporting information will impact the Regulatory Division's ability to process DA permit applications as efficiently as possible. Project complexity, coordination/consultation requirements, and the applicant's ability to obtain requisite state authorizations also directly affect the Regulatory Division's timeframes for processing DA permit applications.

Over the next several months, Regulatory Division staff will make a concerted effort to review and complete all standalone JD and DC requests submitted prior to April 22, 2022, provided that the requests have sufficient documentation. Going forward, in-house wetland delineations conducted by the Regulatory Division (rather than the Regulatory Division's review of a

submittal based on a consultant's prior delineation) will generally only be performed for small tracts (i.e., one acre or less) on a case-by-case basis.

NOTE: Pre-approved Wetland Delineations and/or JDs are NOT a pre-requisite for submitting a DA permit application. When submitting a DA permit application, a depiction that accurately reflects the geographic limits of aquatic resources should be included. A Depiction of Aquatic Resources should consist of a drawing or map depicting the location and configuration of aquatic resources located on the site. Each aquatic resource must be identified and quantified (i.e., acreage and/or linear feet). A depiction of aquatic resources is required for all DA permit applications as well as for "no permit required" requests. Depictions of aquatic resources should include supporting information/documentation but do NOT have to be pre-approved by the Corps. Submitting a depiction of aquatic resources with a permit application is the most effective manner to expedite permit review.

Updated Information and Guidance for preparing delineations and submittals with sufficient supporting information can be found by clicking on the [NEW "Jurisdictional Determination \(JD\)/Delineation Request and Checklist"](#).

III. Delineations/ JDs: As noted above, standalone JDs and/or Delineations are not pre-requisites for submitting DA permit applications. As such, these standalone requests are not subject to mandatory processing timeframe. Requests not associated with a DA permit application, including standalone JDs and DCs, will still be accepted by the Regulatory Division, but the review and processing of such standalone requests will be based on available resources, resulting in extended timelines for these requests to be fully processed.

a. Types of Wetland Delineations / JDs:

- **DC:** A DC provides concurrence that the delineated boundaries of wetlands on a property are a reasonable representation of the aquatic resources on-site. A DC does not address the jurisdictional status of the aquatic resources. (NOTE: A DC is generally the quickest type of standalone request for the Corps to review and process.)
- **Preliminary Jurisdictional Determination (PJD):** A PJD is defined in Corps regulations at 33 CFR 331.2. As explained in further detail in RGL No. 16-01, a PJD is used to indicate that this office has identified the approximate location(s) and boundaries of wetlands and/or other aquatic resources on a site that are presumed to be subject to regulatory jurisdiction of the Corps of Engineers. Unlike an AJD, a PJD does not represent a definitive, official determination that there are, or that there are not, jurisdictional aquatic resources on a site, and does not have an expiration date.
- **Approved Jurisdictional Determination (AJD):** An AJD is defined in Corps regulations at 33 CFR 331.2. As explained in further detail in RGL No. 16-01, an AJD is used to indicate that this office has identified the presence or absence of wetlands and/or other aquatic resources on a site, including their accurate location(s) and boundaries, as well as their jurisdictional status. AJDs are valid for 5 years.

- **Wetland Delineations Performed by the Corps:** These requests have historically been conducted as a courtesy for private property owners for small tracts of land. **Due to current workload and priorities, the Regulatory Division will only provide this service on a limited basis for private individuals on small tracts of land (typically 1 acre or less).**

b. Priorities for Standalone JD / DC Requests

1. DC requests submitted with sufficient supporting information.
2. PJD requests submitted with sufficient supporting information.
3. AJD requests submitted with sufficient supporting information.
4. Requests for wetland delineations to be performed by the Corps.

NOTE: Due to the volume of DA permit applications, this office is unable to provide approximate processing timeframes for Standalone JD/DC requests. At this time, Standalone JD/DC requests may have extended timelines (e.g., one year or longer) based on the size and complexity of the site, the quality of information submitted, and other Regulatory Division priorities. After submittal of a standalone request, if additional information is required, you will be contacted by the project manager.

It is recommended that standalone requests be prepared and submitted by an environmental consultant. Although this is not a requirement, it will certainly help expedite the process.

Information and Guidance for preparing delineations and submittals with sufficient supporting information can be found by clicking on [“Jurisdictional Determination \(JD\)/Delineation Request and Checklist”](#).

For more on the Regulatory Division’s process refinement, and for answers to frequently asked questions, visit our [process refinement FAQ’s](#). As noted above, the process refinement announced today further enables the Regulatory Division to better serve the state’s regulated community in the most efficient manner possible (please see [Regulatory Guidance Letter No. 16-01](#) for more details).